

**American Arbitration Association  
Arbitration Pursuant to Agreement of the Parties  
Before Timothy J. Brown, Esquire**

**In the matter of:**

**Fraternal Order of Police, Lodge #5**

**and**

**City of Philadelphia**

**(Discharge of P/O Elaine Thomas)**

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**AAA Case No. 14 390 00457 13**

**Decision and Award**

**Appearances:**

**On behalf of FOP Lodge # 5;**

Marc Gelman, Esquire  
Jennings Sigmond PC  
510 Walnut Street, 16<sup>th</sup> Floor  
Philadelphia, PA 19106-1595

**On behalf of the City of Philadelphia:**

Margaret Theranger, Esquire  
City of Philadelphia Law Department  
Labor & Employment Unit  
1515 Arch Street, 16<sup>st</sup> Fl  
Philadelphia, PA 19102



Dated: December 18, 2013

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Timothy J Brown, Esquire  
Arbitrator

## INTRODUCTION

This arbitration arises pursuant to a collective bargaining agreement (the Agreement) between **Fraternal Order of Police, Lodge #5** (referred to herein as the FOP or the Union) and **The City of Philadelphia** (the City or the Employer). The Union filed a timely grievance challenging the January 2013 dismissal of Police Officer Elaine Thomas (referred to herein as Grievant). The parties were unsuccessful in resolving the grievance through their grievance procedure and the Union thereafter filed a timely demand for arbitration. The parties selected the undersigned as arbitrator through the processes of the American Arbitration Association (AAA) to conduct a hearing on the grievance and render a final and binding arbitration award. The matter was heard by the undersigned on November 26, 2013 in Philadelphia, Pennsylvania. All present were afforded the opportunity for argument, examination and cross-examination of witnesses and the introduction of relevant exhibits. Grievant was present for the entire hearing and testified on her own behalf. Following the hearing the parties elected to present post-hearing oral closing argument, upon the receipt of which by the Arbitrator the dispute was deemed submitted at the close of business November 26, 2013.

This decision is made following careful consideration of the entire record in the matter including my observations of the demeanor of all witnesses.

## Issues

The parties stipulated that there are no procedural bars to presentation of the matter; that the matter is appropriately before the arbitrator; that the arbitrator has the authority to render a final and binding decision and award in the matter and that the issue or issues presented may accurately be stated as:

Did the City of Philadelphia have just cause to terminate Police Officer Elaine Thomas and, if not, what shall be the remedy?

## **FACTS**

### **Introduction**

Prior to her termination Grievant had been a police officer with the City for approximately fifteen years. By Notice of intention to Dismiss received on January 7, 2013 Grievant was informed that it was the City's intention to dismiss Grievant effective in ten days for the following reasons:

CONDUCT UNBECOMING AN EMPLOYEE. SECTION 1.75  
(Repeated violation of Department rules and regulations, and/or other course of conduct indicating that a member has little or no regard for his/her responsibility as a member of the Police Department.)

In that Internal Affairs investigation #07-1113 discovered a course of conduct whereby you committed fraud by claiming a blood relationship with A [REDACTED] M [REDACTED], C [REDACTED] K [REDACTED], M [REDACTED] C [REDACTED], V [REDACTED] R [REDACTED], E [REDACTED] H [REDACTED] and B [REDACTED] C [REDACTED] to avoid paying Real Estate Transfer Tax during the process of obtaining properties belonging to these individuals. You admitted during you internal Affairs interview that you claimed an exemption of blood relationship and paid no Real Estate Transfer Tax when purchasing or re-deeding these properties, when, in fact, no blood relationship existed.

By your actions, you have indicated that you have little or no regard for your responsibility as a member of the Philadelphia Police Department. Therefore, you will be dismissed after being placed on a thirty day suspension.

### **Events Leading to the Investigation**

In or about 2007 the Department's Internal Affairs Division was conducting an investigation into Grievant possibly fraternizing with a know criminal. During the course of that investigation information came to the attention of the Division

that Grievant had co-purchased an number of properties in the City with an individual named A ■■■ M ■■■■, thereafter transferred sole ownership of some of those properties to A ■■■ M ■■■■ and that in each transfer of property Grievant and/or A ■■■ M ■■■■ claimed an exemption from City and Commonwealth of Pennsylvania transfer tax based upon blood relationship to the seller (Grantor). Because of the unusual nature of Grievant's repeated claims of exemption from transfer tax due to blood relationships on eight occasions from 2004 through 2007, the Police Department's Internal Affairs Division assigned Lieutenant Thomas McDonald to investigate.

### **The Investigation**

During his investigation Lt. McDonald obtained eight deeds to five different properties in the City documenting original joint transfers of the property to Grievant and A ■■■ M ■■■■ and transfers of three of those properties from joint ownership to single ownership, and the Philadelphia Real Estate Transfer Tax Certification forms for each of those eight property transfers. The Transfer Certification is submitted at the time the deed is submitted for recording. Under applicable law, any transfer tax owing to the City and Commonwealth is to accompany submission of the deed and Transfer Tax Certification.

The Transfer Tax Certification form provides spaces for information related to the transfer such as; the identification of seller and purchaser, the location of the property and valuation data used to determine the transfer tax owed. The form also provides for identification of any potential exemptions from transfer taxes. In this regard, the form provides seven pre-printed check boxes for common exemptions such as; will or intestate succession, transfer to an Industrial Development Agency, transfer to the Commonwealth or United States or transfer from a mortgagor to a holder of a mortgage in default. The

form then provides an eighth box for “Other” and a space for a hand-written explanation. On each of the eight Transfer Tax Certification forms admitted into evidence at the arbitration and identified during McDonald’s investigation as submitted by or on behalf of Grievant the “Other” box is checked and respective hand written explanations appear as quote below:

1) In regard to a deed dated November 20, 2004 for the transfer of a property located at 2915 West Diamond Street, Philadelphia from C [REDACTED] K [REDACTED] to Elaine P Thomas the exemption claimed on the Transfer Tax Certification is handwritten as: ***“grantor and grantee are siblings”***

2) In regard to a deed dated October 5, 2004 for the transfer of a property located at 2132 North 29<sup>th</sup> Street, Philadelphia from M [REDACTED] C [REDACTED], Executrix of the Estate of G [REDACTED] C [REDACTED] Deceased, A/K/A G [REDACTED] C [REDACTED] widow to A [REDACTED] M [REDACTED] and Elaine P Thomas the exemption claimed on the Transfer Tax Certification is handwritten as: ***“grantor is the mother of both grantees.”***

3) In regard to a deed dated April 21, 2005, again relating to the transfer of a property located at 2132 North 29<sup>th</sup> Street, Philadelphia only this time from A [REDACTED] M [REDACTED] and Elaine P Thomas to Elaine P Thomas, individually the exemption claimed on the Transfer Tax Certification is handwritten as: ***“grantor and grantee are siblings.”***

4) In regard to a deed dated April 5, 2005 for the transfer of a property located at 2737 West Montgomery Avenue, Philadelphia from V [REDACTED] R [REDACTED], Singleman to A [REDACTED] M [REDACTED] and Elaine P Thomas the exemption claimed on the Transfer Tax Certification is handwritten as: ***“all parties siblings brothers & sisters.”***

5) In regard to a deed dated November 5, 2005 again relating to a transfer of the property located at 2737 West Montgomery Avenue, Philadelphia only this time from A [REDACTED] M [REDACTED] and Elaine P Thomas to A [REDACTED] M [REDACTED] individually the exemption claimed on the Transfer Tax Certification is handwritten as: ***“brother & sister to brother.”***

6) In regard to a deed dated October 11, 2004 for the transfer of a property located at 1813 North 28<sup>th</sup> Street, Philadelphia from E [REDACTED] G. H [REDACTED] Sr. to A [REDACTED] M [REDACTED] and Elaine P Thomas the exemption claimed on the Transfer Tax Certification is handwritten as: *“father to children.”*

7) In regard to a deed dated November 5, 2004 for the transfer of a property located at 1832 North Newkirk Street, Philadelphia from B [REDACTED] M C [REDACTED] to A [REDACTED] M [REDACTED] and Elaine P Thomas the exemption claimed on the Transfer Tax Certification is handwritten as: *“mother to children grantor is grantee(s) mother.”*

8) In regard to a deed dated November 5, 2005 again relating to a transfer of the property located at 1832 North Newkirk Street, Philadelphia only this time from A [REDACTED] M [REDACTED] and Elaine P Thomas to Elaine P Thomas individually the exemption claimed on the Transfer Tax Certification is handwritten as: *“from self and brother to self grantee and grantor are siblings.”*

Lieutenant McDonald also searched applicable records and determined from Grievant's birth certificate that her father is C [REDACTED] S [REDACTED] T [REDACTED] and her mother is H [REDACTED] T [REDACTED], and that the identified Grantor of the 2915 West Diamond property died at the age of 95 on August 25, 2003. Lt. McDonald also discovered an agreement of sale for real estate relating to the property at 1832 North Newkirk Street signed by Grievant as co-buyer with A [REDACTED] M [REDACTED] on November 6, 2004. The Agreement is ostensibly with B [REDACTED] M C [REDACTED] as seller of the property, but is not signed by C [REDACTED]. Rather, the Agreement is “witnessed” by S [REDACTED] C [REDACTED] who represented herself as the granddaughter of C [REDACTED]. The Agreement provides that the buyers will pay \$16,918.00 of which \$3,800.00 would be in cash and the remainder in the form of payments of debts.

McDonald also met with City of Philadelphia Records Commissioner Joan Decker and reviewed pertinent records with her. Decker determined that in the absence of legitimate transfer tax exemptions an amount of \$9,055.52 should have been paid in transfer taxes as a result of the eight deed recordings involved, that failure to pay transfer tax due at the time of the recording of a deed subjected one to a 50% penalty and that at the time of her review of the records tax, interest and penalties due on these eight transfers would amount to \$13,583.28.

As part of his investigation, Lt. McDonald interviewed Grievant on February 28, 2012. During the interview Grievant:

- Identified her parents and siblings and stated that she had no relationship to any of the persons she purchased the five properties at issue from or to A [REDACTED] M [REDACTED].
- Admitted that with exception of one form filed by her mother and on her behalf and one filed by A [REDACTED] M [REDACTED], she filed the deeds and Transfer Tax Certification forms at issue.
- Admitted that she claimed the exemptions indicated on the Transfer Tax Certification forms and that she did not pay transfer tax for the purchase of the properties or subsequent re-deeding of the properties.
- Explained that she paid a dollar for each of the properties and assumed any debt owed by the previous owners on the property such as unpaid water bill and property taxes.
- Claimed that it was her understanding that when a real estate transaction in the City of Philadelphia is for one dollar, such is exempt from transfer tax, and

that to realize the exemption she was required to write down some type of family relationship between the parties.

- In addition to agreeing to pay off debts, she agreed to, and did pay, \$2,000.00 in cash to the grand daughter of the owner of the property at 1832 North Newkirk street, and claimed a transfer tax exemption due to family relationship for that property.

Lieutenant McDonald completed his investigation and forwarded his report finding that Grievant had engaged in fraud (as per the colloquial definition not a legal, criminal law conclusion) by falsely claiming she was the relative of others for the purpose of avoiding the obligation to pay real estate transfer taxes.

### **The Decision to Discharge Grievant**

A Police Board of Inquiring (PBI) Hearing was conducted on December 12, 2012 relating to Grievant's alleged fraudulent conduct. The three-member board unanimously found Grievant guilty of violating Section 1.75 and unanimously recommended discipline of a thirty-day suspension. The decision of the PBI was thereafter reviewed and confirmed by the Department Advocate, and separately by two Deputy Commissioners. Upon review by Police Commissioner Charles Ramsey, the Commissioner determined that rather than a 30-day suspension, Grievant's conduct warranted dismissal.

### **Testimony of Police Commissioner Ramsey**

Commissioner Ramsey had the final decision authority in the matter and testified that following his review of the investigating file and final Report he determined that



dismissal was warranted rather than a 30-day suspension. In this regard, Ramsey testified, he considers allegations of intentional falsification of documentation, particularly where as here the documentation is declared under penalty of law as being true, as a serious matter. This is particularly true for police officers, Ramsey explained, as the integrity of officers is vital to the interests of the Department and the Department's ability to perform its mission. Officers take an oath of Honor, Service and Integrity, and honesty is an essential element of keeping that oath. Here, Ramsey continued, Grievant engaged in a "gross violation" of her oath and knowingly submitted falsified information to exempt her from paying tax. She knew she provided "flat out false" information, the Commissioner testified.

Ramsey acknowledged that punishment for violations of Section 1.75 relating to unbecoming conduct ranges from a 30-day suspension (the longest suspension allowed) to discharge, and that all of those department personnel who reviewed the matter below him recommended a 30-day suspension. However, he continued, even after he took Grievant's seniority into consideration, the fact is Grievant repeatedly and knowingly violated the basic oath of a police officer. If it had occurred on a single isolated occasion, Ramsey maintained, it could have been a mistake perhaps warranting only a thirty-day suspension. But it happened on at least five occasions and under such circumstances, Ramsey asserted, Grievant's conduct was not a mistake; it was intentional. To violate the police oath in such a manner and get away with it, Ramsey testified, would undercut the integrity of the entire department. Consequently he decided that discharge was warranted.

### **Grievant's Testimony**

Grievant testified that she began a side business with business partner A [REDACTED] M [REDACTED] in 2004. Their business model was to first identify homes in the city with “orange label” notices, look up and contact the owners of record and send a mass mailing to such owners offering to acquire their property for \$1.00 and clear their names of debts associated with their property. Once so acquired, Grievant and her partner, an individual she had know from the neighborhood for fifteen to sixteen years and who had construction experience, would then rehabilitate the “homes” – often only a shell without even a roof- and then rent the properties to low income individuals.

Grievant admitted that she completed the Real Estate Transfer Tax Certification forms identified in the Department's investigation and claimed an exemptions from transfer taxes based upon close family relationships. She also admitted that she knew at the time she filed the forms that the information she wrote on the forms was false; she was not related to any of the other individuals identified on any of the forms. She explained that she did so based upon conversations she had with her business partner A [REDACTED] M [REDACTED]. According to Grievant, she knew M [REDACTED] had substantial experience and was very knowledgeable. M [REDACTED] knew where the houses were, where to go at City Hall to file papers, etc. She trusted M [REDACTED] and was “misinformed” by him. According to Grievant, M [REDACTED] told her that transfer tax was not owed when properties were purchased for a single dollar, such transaction were automatically exempt from tax so it didn't matter what Grievant wrote down to support the exemption; that she should just write down a family relationship.

According to Grievant, she was not aware that the owner of 2915 West Diamond was deceased and claimed that she met a woman who claimed to be the owner, and had the same name as the owner. Grievant also testified that she did agree to pay cash relating to the purchase of 1832 North Newkirk Street; that she was to pay \$2,000.00 and A [REDACTED] M [REDACTED] was to pay \$1,500.00, and that she eventually paid the granddaughter of the owner \$2,000.00. The first she knew there was any issue with her taking the tax exemption, Grievant testified, was when Lieutenant McDonald interviewed her about the matter in February 2012.

### **Positions of the Parties**

#### **The Employer**

The City has shown just cause for the discharge of Grievant, the Employer argued. The rule here is important as it protects a core value of the Police Department and the credibility of other officers when they are called to offer sworn testimony. The City conducted a thorough and fair investigation and reasonably concluded Grievant had violated Section 1.75. These false statements by Grievant were not mistakes, the Employer asserted; they were lies. Grievant's falsification did not happen on an isolated occasion, but rather happened repeatedly and the information she provided in her various certifications reflected an intentional scheme to use different types of family relationships from those she had previously used. Her conduct was not the result of a mistake. Moreover, Grievant could not explain why if she believed she was entitled to an exemption because she paid only one dollar for a property why she did not simply state

such as the basis for her exemption. The fact is, the Employer continued, Grievant knew that what she was writing down on the Tax Certification form, a form she completed under penalty of perjury, was a lie.

Nor is Grievant's claim that she took her partner at his word believable, the City argued. Considering the effort to which Grievant went and attention she gave to pursue her side business, it is just not credible that she would simply take A [REDACTED] M [REDACTED] at his word over the plain notice on the Certification that false statements would be punishable under law.

Considering the serious and repeated nature of Grievant's conduct, the absolutely unacceptable character of her conduct, and notwithstanding her seniority, there was just cause for the dismissal of Grievant.

### **The Union**

According to the Union, this is a classic just cause case and although there is agreement that Grievant did what she did; she admitted to her conduct, the issue is the reasonableness of the discipline issued. Discharge was not reasonable under the circumstances, the Union argued. Grievant admits and agrees that she should have been more careful, she should have asked more questions and admits that she was wrong for relying upon the advice of her business partner. But, the fact is Grievant was credible when she testified that she believed at the time that what she was doing was permitted; that to insert a family relationship in the "other" exemption space was essentially a distinction without a difference because she was entitled to the tax exemption. Contrary to the argument of the City, the Union asserted, the fact that Grievant claimed the

exemption five separate times supports her claim that she believed she was permitted to do what she did.

When the evidence is closely examined, and considering she was in partnership with another individual, as a result of claiming tax exemption Grievant perhaps saved approximately \$3,000.00. An exchange of a fifteen-year police career for a failure to pay \$3,000.00 in tax, a failure for which Grievant honestly believed she had a permissible basis, is simply not consistent with just cause. Such a punishment is out of proportion to the offense; a conclusion reached by the P.B.I. as well as three ascending levels of supervisors who reviewed the matter in the Department. Finally, the Union argued, Commissioner Ramsey implied that he believed Grievant's conduct was criminal. Considering that there was no finding of criminal conduct by Grievant in the record, under just cause such a belief by the Commissioner was an impermissible basis upon which to justify Grievant's dismissal.

The City has failed to meet its burden of showing just cause for the termination of Grievant. Grievant should be reinstated; her termination should be reduced to a 30-day suspension and Grievant should be made whole, the Union concluded.

## **Discussion**

### **Just Cause**

An analysis of a case claiming discharge for just cause as is presented here requires consideration of all of the circumstances presented to determine whether the Employer has met its burden of showing that the discipline at issue was fair. There is no

single formula for making such a determination and each case must be considered based upon its own unique set of facts and circumstances.

Of the several factors typically considered by arbitrators when applying the just cause standard, I find that the Employer has plainly shown; (1) that the rule at issue is important, (2) that Grievant knew or should have known of the rule and the potential discipline of discharge for breaking the rule, (3) that the Employer conduct a fair and adequate investigation into the matter and provided Grievant adequate due process and (4) that the Employer had sufficient reason to conclude that Grievant had violated the rule. Consequently, I find that the determinative issue presented here is, as argued by the Union, whether the level of discipline issued against Grievant – here discharge - was appropriate considering Grievant’s record of employment with the Employer and the relative gravity of Grievant’s offense. Based upon the record as a whole, I find that under the circumstances presented discharge of Grievant was within the bounds of fairness contemplated by the just cause standard and that the Employer has met its burden of establishing just cause for the discharge of Grievant.

As a police officer of some fifteen years, Grievant is held to a standard of knowing-well the importance of providing truthful information when called upon to do so whether on duty or off duty, particularly when such a proffer of information is made, as here, on a government form claiming an exemption from tax and subject to a written declaration that:

*“ Under penalties of law or ordinance, I declare I have examined this Statement, including accompanying information, and to the best of my knowledge and belief, it is true, correct and complete.”*

Grievant admitted that she intentionally wrote information on the tax-exempt forms she knew to be untrue. I am not persuaded that Grievant's reliance upon the assurances of her business partner was reasonable and do not find that even if Grievant had been truly persuaded and she honestly believed that the information she received from her business partner was true, that such would constitute an excuse under Just Cause for her to ignore the plain meaning of the oath printed on the Tax Exemption Certifications.

Additionally, I do not credit Grievant's assertion that she was completely convinced about the veracity of her business partner's advice relating to a transfer tax exemption for properties purchased for one dollar, or that she believed she was otherwise entitled to a tax deferral. In coming to this conclusion I primarily rely upon three considerations:

- (1) The patent illogic of the claim;
- (2) The fact that Grievant paid more than \$1 cash for at least one and arguably more than \$1 in value for all of the properties but still claimed the exemption; and
- (3) The manner in which Grievant completed the Tax Exemption forms belies her claim of a good faith belief that what she was doing was permitted.

In this latter regard, Grievant completed multiple of the Tax Certification forms and never identified the "\$1 transfer" as the basis for her claim of tax exemption. Instead Grievant went to the effort of claiming familial relationships on the forms. When the nature of each of the various family relationships she claimed is viewed within the context of the relationships she claimed on other of the forms she completed – particularly those relating to the second transfers of properties from

joint ownership to either A ■■■ M ■■■ or Grievant individually - the relationships chosen support the conclusions that Grievant anticipated that her various declarations would be subject to some level of scrutiny and reflect a desire that each declaration not be inconsistent with her previous declarations. Rather than a series of merely pro forma acts of jotting down just any relationship that happened to come to mind at the time, I find that Grievant's conduct in this regard reflects that she was calculating about her declarations and wanted each form to be believable not only on its face individually, but also when considered within the context of other related forms she completed.

Consequently, I find that Grievant's written declarations of family relationships on the Tax Certification forms were not whimsical acts of merely jotting down any familial relations because, having declared the purchase and sale was for only \$1, it simply would not matter. Rather, I find Grievant's conduct was consistent with a thoughtfully planned and intentional strategy, a strategy whereby she made false declarations and intended that those declarations be believed in their own right. Based upon these considerations, I am persuaded that Grievant intended the family relationships she claimed to be accepted as the factual basis for her claimed tax exemption.

Within the context of her declaring that she was telling the truth, Grievant knowingly and repeatedly provided false information in a manner designed to have the false information believed by the City of Philadelphia – her Employer - so that she could benefit by not paying transfer tax. I agree with the Employer that under such circumstances, Grievant's conduct may not be dismissed as a mistake or



isolated incident that may justify a 30-day suspension, and that because Grievant knowingly engaged in repeated duplicity, discharge was warranted.

### **Conclusions**

The Employer has met its burden of showing just cause for the dismissal of Grievant.

### **AWARD**

The grievance is denied.

A handwritten signature in black ink, appearing to read "Timothy J. Brown", with a long horizontal flourish extending to the right.

Dated: December 17, 2013

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Timothy J. Brown, Esquire  
Arbitrator